MARTY E. SIXT

IBLA 78-374 Decided August 31, 1978

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer NM 31931.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest -- Words and Phrases: Interest

Where an individual files an oil and gas lease offer drawing entry card through a leasing service under an agreement by which the service is authorized to act as his exclusive representative in the sale of any lease rights obtained by him, and he is required to pay the service a set commission plus a percentage of revenues derived from any retained royalty interests, on any such sale, the leasing service has an enforceable right to share in any profits which may derive or accrue from the lease and, therefore, has an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Sole Party in Interest

When a leasing service holds an interest in a lease at the time it files an offer on behalf of an offeror, the offeror is not the sole party in interest, and he is required by regulation, 43 CFR 3102.7, both to reveal this fact at the time his offer is filed, and to provide the names of other interested parties, the nature and extent of their interest, and the nature of the agreement between them, not later than 15 days after the filing of the offer. Failure to file the required statements results in rejection of the offer.

3. Oil and Gas Leases: Applications: Sole Party in Interest

Where a leasing service is held to have an interest in the offer of one of its clients on a particular parcel of land, and the president of the service also files an offer in his own name on that parcel, the prohibition in 43 CFR 3112.5-2 against multiple filings has been violated, as, in addition to its interest in its client's offer, the service also has an interest in its president's offer, owing to his fiduciary duty to the service.

APPEARANCES: Allan M. Blue, Esq., Columbus, Ohio, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Marty E. Sixt filed a noncompetitive simultaneous oil and gas lease offer for parcel NM 1100 on a drawing entry card which was drawn with first priority in the September 1977 drawing held in the New Mexico State Office, Bureau of Land Management (BLM). On October 28, 1977, BLM requested that Sixt submit a statement concerning all circumstances under which the offer had been formulated and a certified copy of any agreement between him and an oil and gas leasing service by which agreement the service was authorized to perform filing services on his behalf. BLM requested this information because Sixt had used a mailing address on his drawing entry card common to other applicants, thus strongly suggesting that he was using a leasing service.

On November 25, 1977, Sixt submitted this information, by and through Fred L. Ross, president of Pro Energy Services, Inc. (Pro Energy), including a copy of a service agreement between Sixt and Pro Energy. This agreement provided, inter alia, that Pro Energy had the exclusive right to represent Sixt in the sale of any lease rights acquired by him as a result of offers made on his behalf pursuant to the service agreement, and that Pro Energy would receive a specified sales commission for any such sale, plus a percentage of revenues derived from any retained royalty interests. BLM held that this agreement gave Pro Energy an interest, within the meaning of the regulations, and that the requirements of 43 CFR 3102.7 therefore applied. As Sixt and Pro Energy had not met these requirements, BLM held that Sixt's offer was properly rejected. Additionally, BLM held that, as the president of Pro Energy had also filed an offer of his own for parcel NM 1100, and as Pro Energy had an interest in Sixt's offer as well, the prohibition against multiple filings set out in 43 CFR 3112.5-2 had also been violated, compelling rejection of Sixt's offer. BLM also noted that approximately 11 other offers were filed which showed the same address as that used by Sixt. Sixt (appellant) filed a notice of appeal of this decision.

[1] There is no doubt that the agreement between appellant and Pro Energy created an "interest" in Pro Energy in whatever lease appellant might win in the drawing. Under 43 CFR 3100.0-5(b), an "interest" includes "any prospective or future claim to an advantage or benefit from a lease, and * * * any defined or undefined share in any * * * profits which may be derived from or which may accrue in any manner from the lease * * *." In the agreement between appellant and Pro Energy, appellant agreed "[t]hat Pro Energy Services, Inc. shall have the exclusive right to represent him in the sale of any rights acquired under an application submitted pursuant to this agreement," and "[t]o pay to Pro Energy Services, Inc., a sales commission of 15% of the gain plus 20% of any monies received by reason of any overriding royalty retained in the sale of any lease acquired under an application submitted pursuant to this agreement." This agreement gave Pro Energy claims to defined shares in both the profit and the royalties resulting from any sale of the lease by Sixt and so created an "interest" in Pro Energy.

Appellant argues that this agreement created no interest in Pro Energy, as "[a]ny interest * * * is contingent upon the sale of this lease interest by [appellant] * * * which is controlled by the sole and unfettered discretion of [a]ppellant." This argument is not persuasive. An "interest" includes any share in profits which may be derived from the lease. 43 CFR 3100.0.5(b). Clearly, this agreement gave Pro Energy a share in any potential profit from the lease.

Nor are we persuaded by appellant's alternate argument that Pro Energy had no interest in his offer because, under Ohio law, the agreement creating the interest was unenforceable at law or equity. Under 43 CFR 3100.0-5(b), "[a]n 'interest' in the lease includes * * * any agreement covering such 'interests.'" Thus, the very existence, at the time the offer was filed, of the agreement covering Pro Energy's claim to a defined share of the profits derived from whatever lease appellant might win, itself constituted an "interest" which had to be declared by appellant when he made his offer. Appellant failed to declare the existence of this agreement when he made his offer, and it was accordingly rejected. It is clear that, when the offer was filed, it was the intent of both parties to the agreement that Pro Energy would receive a share of the proceeds of any lease won by appellant, and it is doubtful that appellant would have questioned the enforceability of this agreement had BLM not rejected his offer on account of it. In order to decide this appeal we need not resort to conjecture about what an Ohio court might hold with regard to the enforceability of this contract under Ohio law if ever a suit were brought to test it. The fact that the agreement existed between the parties at the time the offer was filed, and was not disclosed, is sufficient to establish that the regulation has been violated.

This Board has recently considered several cases involving similar lease agreements by which a leasing service had the right to receive a portion of the proceeds of any sale of any leases won by its clients. We have consistently held that where, as here, an offeror files an oil and gas lease offer through a leasing service under an agreement whereby the service is authorized to act as his exclusive representative in the sale of any rights obtained by him, and the offeror is required to pay the service a sales commission on any such sale, the leasing service has an enforceable right to share in any profits which may derive or accrue from the lease and, therefore, has an "interest" in the lease, as defined by 43 CFR 3100.0-5(b). Alfred L. Easterday, 34 IBLA 195 (1978); 1/ Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977); B. F. Sandoval, Jr., A-29975 (June 12, 1964).

[2] It is equally clear that BLM properly rejected appellant's offer. Under 43 CFR 3102.7, an offeror is required, at the time he files the offer, to disclose the existence of all parties having an interest in it. Moreover, separate statements by both the offeror and the interested party or parties as to the nature and extent of the interests held by each party must be filed within 15 days after the filing of the lease offer, on pain of rejection. Appellant complied with neither of these requirements.

[3] It also appears that Pro Energy violated the provisions of 43 CFR 3112.5-2, which prohibit the filing by a single person or entity of more than one offer on any one parcel of land. BLM noted that Fred L. Ross, president of Pro Energy, also filed an offer for this parcel. In view of Ross' fiduciary duty to Pro Energy, it is likely that his offer was actually effectively filed on its behalf. See William R. Boehm, 34 IBLA 216 (1978); Graybill Terminals, 33 IBLA 243 (1978). As Pro Energy also had an interest in appellant's offer, it effectively had more than one chance in the drawing for this parcel, and, per 43 CFR 3112.5-2, its offer, as well as appellant's, was properly rejected. Moreover, BLM observed that approximately 11 other offers bearing the same address as that on appellant's card were filed for this parcel. If Pro Energy had an interest agreement

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1/ Judicial review pending.

similar to appellant's with any of these 11 offerors, the prohibition against multiple filings was further violated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge